

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

RAUL LOPEZ,

Defendant and Appellant.

E065736

(Super.Ct.No. RIF148253)

O P I N I O N

APPEAL from the Superior Court of Riverside County. Dean Benjamini, Judge.  
Dismissed.

Johanna S. Schiavoni, under appointment by the Court of Appeal, for Defendant  
and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney  
General, Julie L. Garland, Assistant Attorney General, and Barry Carlton and Karl T.  
Terp, Deputy Attorneys General, for Plaintiff and Respondent.

## I. INTRODUCTION

Defendant and appellant, Raul Lopez, appeals from the March 14, 2016 order after judgment denying his February 19, 2016 motion requesting a hearing to determine and to “reduce (or eliminate)” the \$184,322 victim restitution order. The restitution order was imposed on May 17, 2013, when Lopez was sentenced to state prison in this case for misappropriating and embezzling public funds. We dismiss the appeal.

## II. BACKGROUND

### *A. Lopez’s Convictions, Sentence, and the Victim Restitution Order*

Following a jury trial in September 2012, Lopez was convicted of 25 counts of misappropriating public funds (Pen. Code, § 424, subd. (a)(1)),<sup>1</sup> and one count of embezzling over \$400 in public funds by a public servant (§§ 504, 514). The jury also found true a one-year enhancement allegation that Lopez caused losses exceeding \$65,000. (§ 12022.6, subd. (a)(1).)

On May 17, 2013, the court sentenced Lopez to six years eight months in prison and ordered him to pay \$184,322 in victim restitution to the Coachella Valley Unified School District (the District). (§ 1202.4, subd. (f).) The probation report recommended that Lopez be ordered to pay \$184,322 in victim restitution. The probation report explained that the \$184,322 amount was “calculated and set” by the district attorney’s office and was based on “charges from invoices for repairs, parts, and services rendered payable through accounts” with the District.

---

<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

At the sentencing hearing, defense counsel did not challenge the accuracy of the \$184,322 amount and acknowledged that the District had “respond[ed] to Probation and gave them an amount.” The prosecutor submitted that the \$184,322 amount was correct because the District “indicated that amount.” In making the restitution order, the court said: “[T]he restitution amount will be set at \$184,322. [¶] With respect to that amount, Mr. Lopez, you have a right at any time to request a court hearing to litigate whether or not that’s the proper amount of restitution, and you can just contact [your attorney] if you feel that the Court needs to make a determination on that.” Lopez did not request a hearing to challenge the victim restitution amount until January 15, 2016.

The judgment was affirmed on appeal in *People v. Lopez* (Sept. 23, 2014, E058786) [nonpub. opn.]. On our own motion, we take judicial notice of this court’s nonpublished opinion in *Lopez*. (Evid. Code, § 459, subd. (a).) In that appeal, Lopez did not challenge the accuracy of the \$184,322 victim restitution amount and did not claim he was erroneously denied a hearing to determine the restitution amount.

Although the circumstances underlying Lopez’s convictions are not pertinent to this appeal, we briefly describe them to provide context to his current attempt to reduce or eliminate the amount of the victim restitution order. In 1997, Lopez was appointed Director of Transportation for the District. The transportation department maintained a fleet of District-owned school buses and other vehicles. Between 2004 and 2007, Lopez and the owner of Roman’s Auto Body & Paint shop (Roman’s) submitted fraudulent invoices to the District for District-owned vehicle repairs that Roman’s never performed.

Lopez and the owner of Roman's split the money the District paid for the fraudulently-invoiced repair work. During the same time period, defendant authorized payments from the District's budget to NAPA Auto Parts for automobile parts not used in District-owned vehicles, but which defendant used in his own automotive repair business. Defendant also caused overtime sheets to be created and submitted to the District for hours his codefendant Clemencia Ochoa did not work.

*B. Lopez's Motions Concerning the \$184,322 Victim Restitution Amount*

On January 15, 2016, nearly three years after he was sentenced and ordered to pay \$184,322 in victim restitution, Lopez filed an "objection" to the victim restitution order and requested a hearing to determine the restitution amount. In his objection or motion, Lopez did not explain the extent to which he was claiming that the \$184,322 amount was erroneous. (See § 1202.4, subd. (f).)

At a hearing on February 19, 2016, the court denied the motion on the ground it was untimely and the court no longer had jurisdiction to modify the May 17, 2013 restitution order and judgment.

On February 29, 2016, Lopez filed a second motion, again requesting a hearing "to reduce (or eliminate)" the \$184,322 victim restitution amount on the grounds it was inaccurate and was not challenged by his trial counsel or the court at the time of sentencing. Again, Lopez did not explain the bases of his claim or the extent to which he was claiming that the \$184,322 restitution amount was inaccurate. He briefly indicated he was also requesting a hearing to determine his ability to pay the restitution amount.

At a hearing on March 14, 2016, the court denied Lopez's second motion for a hearing to determine the restitution amount. The court explained that Lopez had 30 days from the date he was sentenced to challenge the restitution amount; the 30-day period had long since passed; and the court no longer had jurisdiction to modify the restitution amount. The court did not acknowledge Lopez's request for a hearing to determine his ability to pay the restitution amount. Lopez appeals from the March 14, 2016 order.

### III. DISCUSSION

Lopez claims his second, February 19, 2016 motion requesting a hearing to reduce or eliminate the \$184,322 in victim restitution was erroneously denied "as a matter of law." Relying on *People v. Turrin* (2009) 176 Cal.App.4th 1200 (*Turrin*), he claims the trial court had "continuing jurisdiction to modify an order for victim restitution" under section 1202.42, subdivision (d). (Italics omitted.) For several reasons, we conclude the motion was properly denied and this appeal must be dismissed.

First, Lopez did not challenge the victim restitution order in his direct appeal from the judgment in *Lopez*. His failure to do so precludes him from challenging the restitution order in a subsequent appeal, absent a showing of a justification for the delay. (*People v. Senior* (1995) 33 Cal.App.4th 531, 535-538.) Lopez has not demonstrated any justification for his nearly three-year delay in challenging the restitution order.

Second, Lopez forfeited any challenge to the \$184,322 restitution amount by failing to object to it at the May 17, 2013 sentencing hearing. (*People v. Foster* (1993) 14 Cal.App.4th 939, 943-947 [challenge to restitution order "waived" at sentencing

where defense counsel did not object to recommended restitution amount in probation report].) The probation report, which was available to Lopez and his counsel at the time of sentencing, informed Lopez and his counsel that the probation department was recommending that Lopez be ordered to pay \$184,322 in victim restitution. Lopez was not denied due process because he had both notice of and an opportunity to contest the \$184,322 restitution amount at sentencing. (*Id.* at p. 947; *People v. Thygesen* (1999) 69 Cal.App.4th 988, 993.)

Third, Lopez did not demonstrate, in either his January 16 or February 29, 2016 motion, that the \$184,322 restitution amount was to any extent excessive. Thus, he could not and cannot meet his burden of showing he was prejudiced by his defense counsel's failure to object to the \$184,322 amount at sentencing. (*People v. Foster, supra*, 14 Cal.App.4th at pp. 944-947.)

Fourth, to the extent Lopez suggested in his February 29, 2016 motion that the restitution order should be reduced or eliminated because he was unable to pay it, the trial court was statutorily precluded from considering Lopez's inability to pay. (§ 1202.4, subd. (g); *People v. Draut* (1999) 73 Cal.App.4th 577, 582.)

Fifth, the trial court no longer had jurisdiction to modify the \$184,322 restitution order in January and February 2016 when defendant moved for a hearing to reduce or eliminate the \$184,322 restitution amount. (*Turrin, supra*, 176 Cal.App.4th at pp. 1204-1205; *People v. Scarbrough* (2015) 240 Cal.App.4th 916, 923.) Although Lopez argues that "the trial court had continuing jurisdiction under Penal Code section 1202.42,

subdivision (d) to modify the victim restitution order” (capitalization & bolding omitted), a review of the relevant authorities makes clear that this authority is not unlimited.

Section 1202.46 specifically address the issue of the court’s retention of jurisdiction for purposes of restitution. It provides that where “the economic losses of a victim cannot be ascertained at the time of sentencing pursuant to subdivision (f) of Section 1202.4, the court shall retain jurisdiction over a person subject to a restitution order for purposes of imposing or modifying restitution until such time as the losses may be determined.” This extended jurisdiction is not unlimited and is conditioned upon the court being unable to determine a victim’s economic losses at the time of sentencing. (*Ibid.*) In the instant case, the court was able to determine, and did in fact determine, the amount of losses at the time of sentencing. Thus, this extended jurisdictional period is not applicable in this case.

It is also important to note that section 1202.46 does not authorize *a defendant* to move the court to correct the defendant’s sentence by adding a victim restitution order. Instead, the statute only authorizes victims, the district attorney, or the court, on its own motion, to seek to correct a sentence by adding a victim restitution order.

It is true that in *Turrin, supra*, 176 Cal.App.4th 1200, the court did suggest that “section 1202.42 confers continuing jurisdiction to modify an order for *victim* restitution . . . .” (*Id.* at p. 1207.) However, that case dealt with a defendant who filed a motion to modify the *restitution fines* imposed in his case 10 months after the judgment was

entered. (*Id* at p. 1203.) That court was not asked to decide whether that defendant could move to modify victim restitution.

Section 1202.42 does not specifically refer to extended jurisdiction of a court, but rather deals with income deduction orders. Section 1202.42, subdivision (d) provides an “income deduction order shall be effective so long as the order for restitution upon which it is based is effective or until further order of the court.” Therefore, to the extent necessary to maintain and enforce an income deduction order, the court would retain jurisdiction “so long as the order for restitution upon which it is based is effective.” (*Ibid.*) This extended period of jurisdiction is not applicable in this case as we are not dealing with an income deduction order. Therefore, none of the rules for extended jurisdiction apply and the general jurisdictional rules will apply.

A trial court generally lacks jurisdiction to resentence a criminal after the execution of the sentence has begun (*Turrin, supra*, 176 Cal.App.4th at p. 1204). And here, Lopez sought to reduce the \$184,322 restitution order in 2016, after the execution of his state prison sentence had long since begun. As *Turrin* explained, the general rule that a trial court lacks jurisdiction to resentence a defendant after his or her sentence has begun is subject to several exceptions (*id.* at pp. 1204-1205), but none of the exceptions apply here. For instance, the court may recall the sentence on its own motion within 120 days after committing the defendant to state prison (§ 1170, subd. (d)). The court may also correct a clerical error or an unauthorized sentence at any time, but the court may not correct a judicial error at any time. (*Turrin, supra*, at pp. 1204-1205.) At most, Lopez is



Lastly, this appeal must be dismissed because the trial court did not have jurisdiction to consider Lopez’s motions to reduce or eliminate the \$184,322 restitution amount. Section 1237, subdivision (b) provides that a defendant may appeal “[f]rom any order made after judgment, affecting the substantial rights of the party.” Because the trial court lacked jurisdiction to modify the restitution order, its order denying defendant’s February 29, 2016 motion requesting the same did not affect Lopez’s substantial rights. (*Turrin*, *supra*, 176 Cal.App.4th at p. 1208; *People v. Mendez* (2012) 209 Cal.App.4th 32, 34.)

The appeal is dismissed.

FIELDS

RAMIREZ

---

P. J.

CODRINGTON  
J.